

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
NO: 7:08-CR-5-BR

UNITED STATES OF AMERICA

v.

BRANDON LEE MCMILLIAN

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ORDER

This matter is before the court on defendant's *pro se* motion for return of property pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure. The government filed a response to the motion (which it later amended).

In September 2007, the Robeson County Sheriff's Office arrested defendant. (Aff., DE # 62, ¶ 1.) At the time of the arrest, \$9,700 was apparently seized from defendant. (See *id.* ¶ 2.) Defendant claims that the funds are in the possession of the United States Attorney. (Mot., DE # 61.) According to the United States Attorney, the funds remain in the possession of the State of North Carolina. (Resp., DE # 64, ¶ 4.)

"Under Rule 41(g), this Court cannot direct a person who is not a federal government agent to turn over any property." *Almon v. United States*, 302 F. Supp. 2d 575, 592 (D.S.C. 2004) (citation omitted). Defendant has offered nothing to show that the federal government ever had actual, or even constructive, possession of the funds.

Accordingly, the motion is DENIED.

This 17 May 2012.



W. Earl Britt
Senior U.S. District Judge